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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington DC 20554

MAR 26 1997

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*In the matter of*

Implementation of Section 273 of the  
Communications Act of 1934, as amended  
by the Telecommunications Act of 1996

CC Docket  
No. 96-254

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**REPLY COMMENTS OF AMERITECH**

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REPLY COMMENTS OF AMERITECH

**SUMMARY**

The manufacturing restriction that was formerly contained in the AT&T consent decree is abolished, and Section 273 is all that there is to replace it in the Telecommunications Act of 1996. However, Section 273 only describes the restriction indirectly, and only in terms of a “Bell operating company,” and that term does not include non-telephone subsidiaries. From this it follows that a BOC’s affiliates need no further authority to engage in manufacturing.

Ameritech still believes that the Commission should conclude that neither the information disclosure rules of Section 273(c) nor the procurement rules of Section 273(e) apply to a BOC unless and until that BOC is actually engaged in manufacturing. Nothing in any of the comments shows why this is not the interpretation required by the statutory language, which grants manufacturing relief only “subject to” BOC compliance with those conditions. If the conditions had been meant to have a life of their own apart from removal of the manufacturing prohibition, they would have been located elsewhere in the statute’s structure.

In its initial comments, Ameritech agreed with the Commission’s tentative conclusion that joint manufacturing is not permitted

among unaffiliated BOCs, but opposed extending this rule to prevent a BOC even from *collaborating* with an unaffiliated BOC. That interpretation has no support in the statutory language because Sections 273(a) and 273(b) are separate and distinct. Subsection (a) forbids an RBOC to “engage in . . . manufacturing in conjunction with” another RBOC, but subsection (b) makes it clear that subsection (a) “shall not prohibit . . . close collaboration with any manufacturer.” Thus close collaboration is always permitted, even when it involves another RBOC.

Ameritech also contended that the “equipment, services, and software” for which objective procurement is required by Section 273(e)(2) is limited to telecommunications equipment and customer premises equipment, together with the services and software related to the furnishing of such equipment by a manufacturer. These contentions met with no substantial opposition and should be made the final findings of the Commission.

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**I. Only the BOCs, and Not Their Subsidiaries,  
Are Currently Barred from Manufacturing.**

Ameritech pointed out in its opening Comments (at pp. 2-5) that although Section 601 of the Act decisively abolishes the manufacturing restriction that was formerly contained in the AT&T consent decree, there is nothing anywhere in the new Act that re-nacts that prohibition. This is in sharp contrast to the treatment of the inter-LATA restriction, which is abolished in Section 601 but immediately resuscitated in Section 271. Thus, to the extent the manufacturing prohibition is still in effect at all, its existence is only *implied* by the fact that Section 273 provides a means to obtain permission to manufacture. Section 273(a) only requires a "Bell operating company" to obtain such permission, and that term does not include a BOC's non-

telephone subsidiaries. From this it follows that only the BOC itself remains subject to the prohibition and that its non-successor affiliates need no further authority to engage in manufacturing. The statutory language on this point is clear, and the Commission cannot do otherwise than to acknowledge this reading.

## **II. Section 273's Conditions Apply Only to BOCs Actually Engaged in Manufacturing.**

In its opening Comments of February 24 (at pp. 7–10), Ameritech urged the Commission to conclude that the information disclosure rules of Section 273(c) and the procurement rules of Section 273(e) do not apply to a BOC *unless and until* that BOC is *actually engaged* in manufacturing. Various adversaries, not unexpectedly, argue that these conditions are already in effect. Yet those commenters have no reasons to offer in support of such an interpretation beyond their own self-interest. In contrast, Ameritech's reading is directly supported by the words of the statute, for as already pointed out, the enabling language in Section 273(a) clearly says, "A Bell operating company may manufacture and provide telecommunications equipment, and manufacture customer premises equipment, . . . *subject to the requirements of this section . . .*" [italics added]. This makes clear that *all* of the "requirements" that follow are meant by Congress to be the conditions that must be met for manufacturing relief, rather than to be stand-alone provisions, even

in the case of those that do not have the qualification unnecessarily repeated in each individual subparagraph. In addition, there is no support whatever in the legislative history for a contrary view. It surely wouldn't have made any sense for Congress to include procurement rules and disclosure standards for competing manufacturers in a statute that didn't even grant the prospect of any manufacturing relief — at least, not without leaving behind some clear indication in the legislative history to explain what problem was being addressed — and it is equally improbable to assume that any of the conditions stated in Section 273 could take effect even before any manufacturing has begun.

Thus it is not mere coincidence, as some of the commenters apparently would have it, that the procurement and disclosure rules happen to be found in the same section of the Act that confers the possibility of manufacturing relief. Instead, it is plain that they were put there for the express purpose of associating them with the eradication of the manufacturing prohibition, so that when the law says that manufacturing relief will be “subject to” those conditions, it follows that the conditions can have no independent life of their own before manufacturing is permitted or before it has commenced.<sup>1</sup> The

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<sup>1</sup> As Ameritech pointed out in its opening Comments (at p. 9 n.11), in ordinary circumstances a BOC would not obtain manufacturing relief unless it intended to make use of it, but under the structure of Section 273, BOCs will obtain manufacturing relief “automatically” as they obtain in-region interLATA

(Footnote Continued . . . )

Commission should unequivocally adopt that interpretation of the statute.

### **III. The Act Does Not Prohibit Collaboration Among RBOCs.**

The NPRM (at ¶ 11) tentatively concluded that a BOC's ability to collaborate with manufacturers under Sections 273(b) does not include collaborating with the other BOCs. However, Ameritech explained in its opening comments (pp. 10–14) that this is not a correct reading of the statute because it carelessly confuses Sections 273(a) and 273(b). Although each RBOC is forbidden, under subsection (a), to “engage in . . . manufacturing in conjunction with” another RBOC, subsection (b) goes on to say that the prohibition in subsection (a) “shall not prohibit . . . close collaboration with *any* manufacturer” [italics added] — plainly including close collaboration with other RBOCs who have obtained manufacturing authority. Thus there is a clear distinction between joint (or “conjunctional”) manufacturing and close collaboration with manufacturers. Congress treated them differently, and it did so with a purpose which must be

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( . . . Footnote Continued)

relief under Section 271. Thus it is entirely possible that a BOC authorized for manufacturing will elect not to pursue that activity, and there is no reason that such a BOC should be required to comply with the information disclosure and procurement rules. Thus the conditions should apply only to those who are *actually* doing manufacturing, and not include those who are merely authorized to do so.



respected by the Commission in applying the law. The Commission should therefore make clear that the ability of an RBOC to collaborate closely with manufacturers includes the ability to collaborate closely with any other RBOC with manufacturing authority.

#### **IV. “Equipment” in Section 273(e)(2) Is Limited to Telecommunications Equipment and CPE.**

In regard to Section 273(e)(2), which requires objective procurement of “equipment, services, and software,” the NPRM (at ¶ 68) asked whether “equipment” should be limited to telecommunications equipment and customer premises equipment. Ameritech responded (at pp. 33–36) that this question should be answered in the affirmative, since it is only the other manufacturers of those categories of equipment who are likely to be affected by anything that is granted to the BOCs or their affiliates under the new law. For the same reason, Ameritech said, the only “services” subject to Section 273(e)(2) are those that a manufacturer provides in connection with its telecommunications equipment, and the “software” in question is the software integral to the operation of manufactured equipment.

These answers are not only the right ones under the statutory language, but they have also been met with no substantial

opposition.<sup>2</sup> Accordingly they should become the findings of the Commission on these points.

Respectfully submitted,



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<sup>2</sup> Telecommunications Industry Association (at pp. 50-51) laconically asserts that "BOC purchases of any type of product or service provide opportunities for cross-subsidization," but it wholly fails to show how there could be any type of cross-subsidization when the BOC does not have a manufacturing affiliate. The mere fact that the BOC and a Section 272 affiliate might combine their purchases from a non-affiliated manufacturer and use the transaction to disguise a cross-subsidy among themselves, *id.* at 51 n.128, may be a concern under Section 272 but not Section 273.

PROOF OF SERVICE

I hereby certify that on this 26th day of March, 1997, the foregoing Reply Comments of Ameritech were served by depositing copies thereof in the U.S. Mail at Hoffman Estates, Illinois, addressed to each person shown on the following list.

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